

**Criminal Offenses Amendments**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Matthew H. Gwynn**

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**LONG TITLE****General Description:**

This bill addresses sentencing and criminal procedures for certain criminal offenses.

**Highlighted Provisions:**

This bill:

- requires a prosecutor, when reducing the level of certain crimes in an information or as part of plea deal, to explain on the record why the prosecutor is seeking the reduction;
- requires an indeterminate prison term to be imposed for certain attempt convictions;
- increases penalties for the crime of aggravated child abuse;
- repeals a statute allowing probation for certain offenses committed against children; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

## AMENDS:

**76-5-109.2**, as enacted by Laws of Utah 2022, Chapter 181

**77-2-2.3**, as last amended by Laws of Utah 2024, Chapter 234

**77-18-107**, as enacted by Laws of Utah 2021, Chapter 260

## REPEALS AND REENACTS:

**76-3-406**, as last amended by Laws of Utah 2024, Chapter 96

## REPEALS:

**76-5-406.5**, as last amended by Laws of Utah 2022, Chapter 181

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **76-3-406** is repealed and reenacted to read:

**76-3-406 . Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted.**

- 32 (1) As used in this section, "attempted child rape offense" means an attempt to commit a  
33 felony that is:
- 34 (a) rape of a child as described in Section 76-5-402.1;
  - 35 (b) object rape of a child as described in Section 76-5-402.3; or
  - 36 (c) sodomy on a child as described in Section 76-5-403.1.
- 37 (2) Except as provided in Subsection (3), a court may not grant probation, suspend the  
38 execution or imposition of a sentence, enter a judgment for a lower category of offense,  
39 or order hospitalization, if the effect of which would in any way shorten the prison  
40 sentence for an actor who commits a capital felony or a first degree felony, or attempts  
41 to commit a capital felony or a first degree felony, that is:
- 42 (a) aggravated child abuse as described in Section 76-5-109.2;
  - 43 (b) aggravated murder as described in Section 76-5-202;
  - 44 (c) murder as described in Section 76-5-203;
  - 45 (d) child kidnapping as described in Section 76-5-301.1;
  - 46 (e) aggravated kidnapping as described in Subsection 76-5-302(3)(b);
  - 47 (f) rape as described in Subsection 76-5-402(3)(b), (3)(c), or (4);
  - 48 (g) rape of a child as described in Section 76-5-402.1;
  - 49 (h) object rape as described in Subsection 76-5-402.2(3)(b), (3)(c), or (4);
  - 50 (i) object rape of a child as described in Section 76-5-402.3;
  - 51 (j) forcible sodomy as described in Subsection 76-5-403(3)(b), (3)(c), or (4);
  - 52 (k) sodomy on a child as described in Section 76-5-403.1;
  - 53 (l) forcible sexual abuse as described in Subsection 76-5-404(3)(b)(i) or (ii);
  - 54 (m) aggravated sexual abuse of a child as described in Section 76-5-404.3; or
  - 55 (n) aggravated sexual assault as described in Section 76-5-405.
- 56 (3) Except for an attempted child rape offense, a court may suspend the execution or  
57 imposition of a prison sentence for an actor who is convicted of an attempt to commit a  
58 felony described in Subsection (2) if the court:
- 59 (a) makes a finding on the record that:
    - 60 (i) details why it is in the interests of justice not to execute or impose the prison
    - 61 sentence; and
    - 62 (ii) the actor does not pose a significant safety risk to:
      - 63 (A) the victim of the attempted crime; or
      - 64 (B) the general public; and
  - 65 (b) orders the actor to complete the terms and conditions of probation that is supervised

66 by the Department of Corrections.

67 (4) Except for an offense before the district court in accordance with Section 80-6-502 or  
68 80-6-504, the provisions of this section do not apply if the sentencing court finds that the  
69 actor:

70 (a) was under 18 years old at the time of the offense; and

71 (b) could have been adjudicated in the juvenile court but for the delayed reporting or  
72 delayed filing of the information.

73 (5) Except as provided in Subsection 77-16a-103(6) or (7), a court may not grant probation,  
74 suspend the execution or imposition of a sentence, enter a judgment for a lower category  
75 of offense, or order hospitalization under Section 76-3-201 or 77-18-105 or Title 77,  
76 Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition, if the  
77 court is prohibited from doing so by this section.

78 Section 2. Section **76-5-109.2** is amended to read:

79 **76-5-109.2 . Aggravated child abuse.**

80 (1)(a) As used in this section:

81 (i) "Child" means the same as that term is defined in Section 76-5-109.

82 (ii) "Serious physical injury" means the same as that term is defined in Section  
83 76-5-109.

84 (b) Terms defined in Section 76-1-101.5 apply to this section.

85 (2) An actor commits aggravated child abuse if the actor:

86 (a) inflicts upon a child serious physical injury; or

87 (b) having the care or custody of such child, causes or permits another to inflict serious  
88 physical injury upon a child.

89 (3)(a) A violation of Subsection (2) is a [~~second~~] first degree felony if done intentionally  
90 or knowingly.

91 (b) A violation of Subsection (2) is a third degree felony if done recklessly.

92 (c) A violation of Subsection (2) is a class A misdemeanor if done with criminal  
93 negligence.

94 (4)(a) A parent or legal guardian who provides a child with treatment by spiritual means  
95 alone through prayer, in lieu of medical treatment, in accordance with the tenets and  
96 practices of an established church or religious denomination of which the parent or  
97 legal guardian is a member or adherent may not, for that reason alone, be considered  
98 to have committed an offense under this section.

99 (b) A parent or guardian of a child does not violate this section by selecting a treatment

100 option for the medical condition of the child, if the treatment option is one that a  
101 reasonable parent or guardian would believe to be in the best interest of the child.

102 (c) An actor is not guilty of an offense under this section for conduct that constitutes:

103 (i) conduct described in Section 76-2-401; or

104 (ii) the use of reasonable and necessary physical restraint or force on a child:

105 (A) in self-defense;

106 (B) in defense of others;

107 (C) to protect the child; or

108 (D) to remove a weapon in the possession of a child for any of the reasons  
109 described in Subsections (4)(c)(ii)(A) through (C).

110 Section 3. Section **77-2-2.3** is amended to read:

111 **77-2-2.3 . Reducing the level of an offense.**

112 (1) [~~Notwithstanding~~] Subject to Subsection (2) and notwithstanding any other provision of  
113 law, [a] if a prosecuting attorney determines that it is in the interests of justice, the  
114 prosecuting attorney may:

115 (a) present and file an information charging an individual for an offense under  
116 Subsections 76-3-103(1)(b) through (d), Subsection 76-3-103(2), or Section 76-3-104  
117 with a classification of the offense at one degree lower than the classification that is  
118 provided in [~~statute if the prosecuting attorney believes that the sentence would be~~  
119 ~~disproportionate to the offense because there are special circumstances relating to the~~  
120 ~~offense] the applicable section; or~~

121 (b) subject to the approval of the court, amend an information, as part of a plea  
122 agreement, to charge an individual for an offense under Subsections 76-3-103(1)(b)  
123 through (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the  
124 offense at one degree lower than the classification that is provided in [~~statute]~~ the  
125 applicable section.

126 (2) If the offense the prosecuting attorney is seeking to lower by one degree, either by  
127 information or plea agreement under Subsection (1)(a) or (b), is an offense listed in  
128 Subsection 76-3-406(2), the prosecuting attorney shall, on the record in a manner and  
129 time determined by the court, explain the special circumstances that has led the  
130 prosecuting attorney to determine that the lowering of the offense by one degree is in the  
131 interests of justice.

132 [~~2~~] (3) A court may:

133 (a) enter a judgment of conviction for an offense filed under Subsection (1) at one

134 degree lower than classified in [statute] the applicable section; and  
135 (b) impose a sentence for the offense filed under Subsection (1) at one degree lower than  
136 classified in [statute] the applicable section.

137 [(3)] (4) A conviction of an offense at one degree lower than classified in [statute] the  
138 applicable section under Subsection [(2)] (3) does not affect the requirements for  
139 registration of the offense under Title 77, Chapter 41, Sex, Kidnap, and Child Abuse  
140 Offender Registry, if the elements of the offense for which the defendant is convicted  
141 are the same as the elements of an offense described in Section 77-41-102.

142 [(4)] (5) This section does not preclude an individual from obtaining and being granted an  
143 expungement for the individual's record in accordance with Title 77, Chapter 40a,  
144 Expungement of Criminal Records.

145 Section 4. Section **77-18-107** is amended to read:

146 **77-18-107 . Home confinement -- Electronic monitoring for home confinement.**

- 147 (1) The court may order home confinement as a condition of probation under the  
148 supervision of the department, except as provided in [Sections] Section 76-3-406[~~and~~  
149 ~~76-5-406.5~~].
- 150 (2) The department shall establish procedures and standards for home confinement for all  
151 defendants supervised by the department for home confinement.
- 152 (3) If the court places the defendant on probation and orders the defendant to participate in  
153 home confinement under Subsection (1), the court may order the defendant to participate  
154 in home confinement through the use of electronic monitoring until further order of the  
155 court.
- 156 (4) The electronic monitoring of a defendant shall alert the department and the appropriate  
157 law enforcement agency of the defendant's whereabouts.
- 158 (5) An electronic monitoring device shall be used under conditions that require:  
159 (a) the defendant to wear an electronic monitoring device at all times; and  
160 (b) the device be placed in the home of the defendant to monitor the defendant's  
161 compliance with the court's order.
- 162 (6) If a court orders a defendant to participate in home confinement through electronic  
163 monitoring as a condition of probation under Subsection (3), the court shall:  
164 (a) place the defendant on probation under the supervision of the department;  
165 (b) order the department to place an electronic monitoring device on the defendant and  
166 install electronic monitoring equipment in the residence of the defendant; and  
167 (c) order the defendant to pay the costs associated with home confinement to the

168 department or the program provider.

169 (7) The department shall pay the costs of home confinement through electronic monitoring  
170 only for an individual who is determined to be indigent by the court.

171 (8) The department may provide the electronic monitoring described in this section directly  
172 or by contract with a private provider.

173 Section 5. **Repealer.**

174 This bill repeals:

175 Section **76-5-406.5, Circumstances required for probation or suspension of sentence for**  
176 **certain sex offenses against a child.**

177 Section 6. **Effective date.**

178 This bill takes effect on May 7, 2025.